

**EASTERN DISTRICT OF ARKANSAS  
CRIMINAL JUSTICE ACT PLAN  
(Pursuant to 18 U.S.C. Sec. 3006A)**

**(Adopted February 26, 1998,  
and supersedes all previous  
editions and revisions)**

## TABLE OF CONTENTS

<b>I. AUTHORITY .....</b>	<b>1</b>
<b>II. STATEMENT OF POLICY .....</b>	<b>1</b>
A. Objectives. ....	1
B. Compliance. ....	1
<b>III. SCOPE OF THE PLAN .....</b>	<b>2</b>
A. Mandatory Appointments .....	2
B. Waiver of Counsel .....	3
C. Discretionary Appointments .....	3
D. Standby Counsel .....	5
1. For a Financially Eligible Defendant .....	5
2. For a Financially Ineligible Defendant .....	5
3. Scope of Standby Counsel's Responsibilities. ....	5
E. Appointment Alternatives .....	6
F. Representation in Federal Capital Cases and in Death Penalty Federal Habeas Corpus Proceedings .....	6
1. Number of Counsel .....	6
a) Federal Capital Prosecutions .....	6
b) Death Penalty Federal Habeas Corpus Proceedings .....	7
2. Procedures for Appointment in Federal Capital Prosecutions .....	7
3. Procedures for Appointment in Death Penalty Federal Habeas Corpus Proceedings ...	8
4. Attorney Qualification Requirements .....	8
a) Appointment of Counsel Prior to Judgment .....	8
b) Appointment of Counsel After Judgment .....	8
c) Attorney Qualification Waiver .....	8
5. Continuity of Representation .....	8
G. Federal Public Defender Organization .....	9
H. Time of Appointment .....	9
I. Services Included .....	9
<b>IV. ELIGIBILITY .....</b>	<b>10</b>
A. Fact-finding .....	10
B. Standards for Eligibility .....	10
C. Partial Eligibility .....	11
<b>V. PANEL SELECTION COMMITTEE .....</b>	<b>11</b>
A. Membership .....	11
B. Duties .....	11
<b>VI. CRIMINAL JUSTICE ACT PANELS .....</b>	<b>12</b>
A. Composition .....	12
B. Qualifications .....	12
C. Naming of Panel Members .....	12

D. Maintenance of List and Distribution of Appointments .....	13
E. Method of Selection .....	13
F. No Favoritism .....	13
G. Separate or Plural Appointments .....	13
H. Two Attorneys for One Client .....	14
<b>VII. DURATION AND SUBSTITUTION OF APPOINTMENT .....</b>	<b>14</b>
A. Duration of Appointment in District Court .....	14
B. Representation on Appeal .....	14
C. Change in Financial Status. ....	15
D. Inability to Pay Retained Counsel .....	15
E. Substitution of Counsel .....	16
F. Transferred Cases .....	16
<b>VIII. COMPENSATION OF COUNSEL AND CLAIMS THEREFOR .....</b>	<b>16</b>
A. Limitations .....	16
B. Expenses .....	16
C. Excess Payment .....	17
D. Interim Payments to Counsel .....	18
E. Filing Claims .....	18
F. Audit by CJA Liaison .....	18
G. Approval by Court or Magistrate Judge .....	19
H. Court Approval Required .....	19
I. New Trials .....	19
J. Time Limits .....	19
<b>IX. SERVICES OTHER THAN COUNSEL .....</b>	<b>19</b>
A. Upon Request .....	19
B. Without Prior Approval .....	20
C. Maximum Amounts .....	20
D. Consulting Services in Capital Federal Habeas Corpus Cases .....	20
E. Services for Persons with Retained Counsel .....	20
F. Services for Pro Se Litigants .....	20
G. Claims .....	21
<b>X. DUTIES OF FEDERAL PERSONNEL AND APPOINTED COUNSEL .....</b>	<b>21</b>
A. Presentation of Accused for Appointment of Counsel .....	21
B. Pretrial Services Interview .....	21
C. Notice of Indictment or Criminal Information .....	21
D. Duties of Appointed Counsel .....	21
<b>XI. MISCELLANEOUS. ....</b>	<b>22</b>
A. Forms .....	22
B. Guidelines for the Administration of the Criminal Justice Act .....	22
C. Effective Date .....	22

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS**

**CRIMINAL JUSTICE ACT PLAN**

**I. AUTHORITY**

Pursuant to the provisions of the Criminal Justice Act of 1964, as amended, (CJA), 18 U.S.C. 3006A, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the Eastern District of Arkansas do hereby adopt, subject to approval of the Judicial Council of the Eighth Circuit, the following plan for implementation of said Act.

**II. STATEMENT OF POLICY**

**A. Objectives.**

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the AntiDrug Abuse Act of 1988 (codified in part at 21 U.S.C. 848(q)), and the CJA Guidelines in a way that meets the needs of this district.

**B. Compliance.**

1. The Court, its Clerk, the Federal Public Defender Organization, post conviction relief organizations, if any, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Federal Public Defender shall be provided with a current copy of the CJA Plan for this District. Likewise, each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

### **III. SCOPE OF THE PLAN**

**A. Mandatory Appointments.** Representation under this Plan shall be provided for any financially eligible person who:

- 1. is charged with a felony or with a Class A misdemeanor;**
- 2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. 5031;**
- 3. is charged with a violation of probation, or faces a change of a term or condition of probation or extension or revocation of a term of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);**
- 4. is under arrest, when such representation is required by law;**
- 5. is entitled to appointment of counsel in parole proceedings under 18 U.S.C. 4201 et seq.;**
- 6. is charged with a violation of supervised release or faces modification or enlargement of a condition (unless the modification sought is favorable to the releasee and the government has not objected to the proposed change), or extension or revocation of a term of supervised release;**
- 7. is subject to a mental condition hearing under 18 U.S.C. 4241 et seq.;**
- 8. is in custody as a material witness;**
- 9. is seeking to set aside or vacate a death sentence under 28 USC 2254 or 2255;**
- 10. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. 4109;**
- 11. is entitled to appointment of counsel under the sixth amendment to the Constitution; or**
- 12. faces loss of liberty in a case, and Federal law requires appointment of counsel.**

**B. Waiver of Counsel.**

1. In every case in which a person entitled to representation under this Plan appears without counsel, the United States Magistrate Judge or the District Judge shall advise the person of the right to be represented by counsel and that counsel will be appointed to represent the defendant if the defendant is financially unable to obtain counsel.

2. Unless the person waives representation by counsel in open court, the judicial officer, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent him. Where a hearing and assistance of counsel are required pursuant to Fed. R. Crim. P. 32.1, counsel shall be contacted before the defendant waives representation. If a defendant then waives counsel, such waiver shall be in writing and need not be in open court.

**C. Discretionary Appointments.** Whenever the presiding judicial officer determines that the interests of justice so require, representation may be provided for any financially eligible person who:

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;

2. is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. 2241, 2254, or 2255;

3. is charged with civil or criminal contempt and faces loss of liberty;

4. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

5. is proposed by the United States attorney for processing under a pretrial diversion program;

6. is held for international extradition under 18 USC 3181, et seq;

7. is in need of legal consultation, and the court determines that such is warranted;  
or

8. is involved in "ancillary matters appropriate to the proceedings" pursuant to 18 USC 3006A(c).

**In determining whether a matter is ancillary to the proceedings, the court should consider:**

**a) whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal criminal charge, or**

**b) whether such representation is reasonably necessary to accomplish, inter alia, one of the following objectives:**

**(i) to protect a Constitutional right;**

**(ii) to contribute in some significant way to the defense of the principal criminal charge;**

**(iii) to aid in preparation for the trial or disposition of the principal criminal charge;**

**(iv) to enforce the terms of a plea agreement in the principal criminal charge;**

**(v) to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding pursuant to 21 U.S.C. 881, 19 U.S.C. 1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act and paragraph 2.04 of the Guidelines; or**

**(vi) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property pursuant to Fed. R. Crim. P. 41(e), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act and paragraph 2.04 of the Guidelines.**

**The scope of representation in the ancillary matters should extend only to the part of the ancillary matter that relates to the principal criminal charge and to the correlative objective sought to be achieved in providing the representation (e.g., a CJA defendant in a criminal stock fraud case should be represented by CJA counsel at the defendant's deposition in a parallel civil fraud action for the limited purpose of advising him concerning his Fifth Amendment rights).**

Representation in an ancillary matter shall be compensable as part of the representation in the principal matter for which counsel has been appointed and shall not be considered a separate appointment for which a separate compensation maximum would be applicable. A private panel attorney appointed under the Act may obtain, through an *ex parte* application to the court, a preliminary determination that the representation to be provided in an ancillary matter is appropriate to the principal criminal proceeding and compensable under subsection (c) of the Act and this Plan. However, failure to obtain such a preliminary determination shall not bar the court from approving compensation for representation in an ancillary matter provided that the services and compensation related thereto are justified in a memorandum submitted by the attorney to the court at the conclusion of the principal criminal matter and the presiding judicial officer finds that such representation was appropriate.

**D. Standby Counsel.**

1. **For a Financially Eligible Defendant.** The Court recognizes that criminal defendants have both a constitutional and statutory right to self-representation in federal court. However, the presiding judicial officer may find it necessary to appoint "standby" counsel to be available to assist a *pro se* defendant in his or her defense. While the court has inherent authority to appoint standby counsel, such appointments may not be made and counsel may not be compensated under this Plan unless the defendant qualifies for appointed counsel.

2. **For a Financially Ineligible Defendant.** In circumstances in which appointment is made under the court's inherent authority, and counsel serves exclusively on behalf of the court to protect the integrity and continuity of the proceedings, and does not represent the defendant, any compensation to be paid counsel shall be in the capacity of an "expert or consultant" pursuant to 5 U.S.C. 3109. An appointment pursuant to this section may be made regardless of whether the defendant is financially able to obtain adequate representation, and compensation will be determined by the judicial officer in accordance with the CJA hourly rates and case compensation maximums. If, during the course of the proceedings, a *pro se* defendant who is financially able to retain counsel elects to do so, the court's appointment of an attorney pursuant to 5 U.S.C. 3109 shall be terminated.

3. **Scope of Standby Counsel's Responsibilities.** Since the Act and Guidelines are silent on this issue, the court and counsel may wish to take into consideration the American Bar Association Standards for Criminal Justice, 4-3.9.



**E. Appointment Alternatives.**

1. Counsel furnishing representation under this Plan shall be selected from:
  - a) the Public Defender's office (see G.2 below), or
  - b) a CJA panel of attorneys designated or approved by the Court.
2. The Federal Public Defender will be appointed counsel in all cases except:
  - a) when the Federal Public Defender already represents a defendant in a multiple defendant case;
  - b) where there is an actual conflict of interest;
  - c) where there is a potential conflict of interest or other circumstance which the Federal Public Defender certifies to the appointing District or Magistrate Judge could in his/her judgement prejudice representation of the defendant.
3. However, when the judicial officer presiding over the case determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant.
4. Under these guidelines, the Court anticipates that approximately 25% of the CJA appointments will go to members of the private Bar.

**F. Representation in Federal Capital Cases and in Death Penalty Federal Habeas Corpus Proceedings.**

**1. Number of Counsel.**

- a) **Federal Capital Prosecutions.** Pursuant to 18 U.S.C. 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

b) **Death Penalty Federal Habeas Corpus Proceedings.** Pursuant to 21 U.S.C. 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

If qualified under paragraph 3 of this section, an attorney furnished by a state or local public defender organization or by a legal aid agency or other private, non-profit organization may be appointed to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief. Such appointments may be in addition to the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed *pro hac vice* in accordance with the CJA *Guidelines*. Such appointments should be made when the court determines that they will provide the most effective representation.

2. **Procedures for Appointment in Federal Capital Prosecutions.** In appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender. In fulfilling this responsibility, the federal public defender organization should consult with counsel (if counsel has already been appointed or retained) and the court regarding the facts and circumstances of the case to determine the qualifications which may be required to provide effective representation. In evaluating the qualifications of counsel considered for appointment, the federal public defender organization should consider:

- a) the minimum experience standards set forth in 21 U.S.C. 848(q), 18 U.S.C. 3005 (see Attachment A), and other applicable laws or rules;
- b) the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;
- c) the recommendations of other federal public and community defender organizations, and local and national criminal defense organizations;
- d) the proposed counsel's commitment to the defense of capital cases; and
- e) the availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

**3. Procedures for Appointment in Death Penalty Federal Habeas Corpus Proceedings.** The Federal Public Defender's Capital Habeas Unit should ordinarily be appointed as either sole counsel or lead counsel in all federal death penalty habeas corpus proceedings.

**4. Attorney Qualification Requirements.**

a) **Appointment of Counsel Prior to Judgment.** Pursuant to 21 U.S.C. 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

b) **Appointment of Counsel After Judgment.** Pursuant to 21 U.S.C. 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years' experience in the handling of appeals in felony cases in the court.

c) **Attorney Qualification Waiver.** Pursuant to 21 U.S.C. 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. 848(q) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

**5. Continuity of Representation.**

a) In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, presiding judicial officers are urged to continue the appointment of state post-conviction counsel, if qualified under paragraph 3, when the case enters the federal system.

b) Section 848(q)(8) of Title 21 U.S.C. provides: "Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of

certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

**G. Federal Public Defender Organization**

**1. Establishment.**

a. The Federal Public Defender Organization of the Eastern and Western Districts of Arkansas has been established and is hereby recognized as the Federal Public Defender Organization for this District.

b. The Federal Public Defender Organization shall be capable of providing some legal services throughout the district and shall maintain its primary office in Little Rock, Arkansas.

2. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

**H. Time of Appointment.**

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a Magistrate Judge or District Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Magistrate Judge or District Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

**I. Services Included.**

Representation under this Plan shall include counsel and investigative, expert, and other services necessary for adequate representation.

## **IV. ELIGIBILITY.**

### **A. Fact-finding**

- 1. The determination of eligibility for representation under this Plan is a judicial function to be performed by a District Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition. Other officers or employees of the court may be designated by the court to obtain or verify the facts upon which such determination is to be made.**
- 2. Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry as to eligibility may be made subsequent to appointment of counsel and as soon thereafter as practicable.**
- 3. All statements made by a person in requesting appointed counsel or during the inquiry into eligibility shall be either:**
  - a) by affidavit (preferably CJA Form 23) sworn before the court, the court clerk, a deputy clerk, or a notary public; or**
  - b) under oath in open court.**
- 4. The person seeking appointment of counsel has the responsibility of providing the court with sufficient and accurate information upon which the court can make an eligibility determination.**

### **B. Standards for Eligibility.**

- 1. A person is "financially unable to obtain counsel" within the meaning of this Plan if his net financial resources and income are insufficient to enable him to obtain qualified counsel.**
- 2. Any doubts as to a person's eligibility should be resolved in his favor.**
- 3. At the time of determining eligibility, the judicial officer should inform the person of the penalties for making a false statement, and of his obligation to inform the court and his attorney of any change in his financial status.**

### **C. Partial Eligibility**

- 1. If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him and his dependents with the necessities of life and to provide the defendant's release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under this Plan and should direct him to pay the available excess funds to the Clerk of the Court at the time of such appointment or from time to time thereafter.**
- 2. The judicial officer may increase or decrease the amount of such payments and impose such other conditions from time to time as may be appropriate.**
- 3. Funds collected pursuant to this subsection are held and shall be disposed of subject to 18 U.S.C. 3006A(f).**

### **V. PANEL SELECTION COMMITTEE.**

**A. Membership.** A Panel Selection Committee shall be established by the Court. The Committee shall consist of one District Judge, one Magistrate Judge, the CJA Panel Representative, the Clerk of the Court, and the Federal Public Defender. The Committee shall be chaired by the District Judge. The CJA Panel Representative shall be appointed by the Chief District Judge or his/her designee and shall serve in that position for two years.

#### **B. Duties.**

- 1. The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies on the current panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.**

**At its annual meeting, the Committee shall also review the operations and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.**

- 2. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.**

3. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph VI.B of this plan. At least once each year the Committee shall provide the Court with information on the panel of attorneys in each of the categories listed in paragraph VI.B.

## **VI. CRIMINAL JUSTICE ACT PANELS**

### **A. Composition.**

1. The Court shall establish one panel (hereinafter referred to as the CJA Panel) with representatives from each of the five divisions of the Eastern District of Arkansas. Members of the CJA panel shall serve at the pleasure of the Court.
2. The panel shall consist of attorneys who are eligible, willing, and competent to provide adequate representation under the Criminal Justice Act.
3. The panel shall be adequate in number to supply the needs of the district at any given time.

### **B. Qualifications.**

Any member in good standing of the bar of this Court, who has demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines, shall be deemed qualified to serve on the CJA panel. However, the Panel Selection Committee, with the approval of the Court, may establish additional qualifications, including relevant training and experience. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, or disabling condition.

### **C. Naming of Panel Members.**

Attorneys presently serving as members of the CJA panel shall continue to serve at the pleasure of the Court. Qualified attorneys may by order of the Court be added to the roster at any time. Periodically, the Panel Selection Committee, after consultation with other knowledgeable persons, shall make recommendations about additions to or deletions from the panel.

Upon recommendation of the Panel Selection Committee or on the Court's own motion, a judge may at any time add or delete panel members.

**D. Maintenance of List and Distribution of Appointments.**

The Clerk of the Court shall maintain a current list in alphabetical order of all attorneys included on the CJA panel with current office addresses, telephone numbers, and social security numbers. A copy of this list shall be furnished to each District Judge, Magistrate Judge, and the Federal Public Defender, as well as additions or deletions which may be made from time to time as the Court may deem necessary and appropriate.

**E. Method of Selection.**

Appointments from the list should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and time and geographical considerations.

**F. No Favoritism.**

Appointing officers are to avoid favoritism and monopoly, or the appearance thereof, in making appointments. Such officers are to be mindful that attorneys who accept appointments under this Plan do so in fulfillment of their professional obligations as officers of the Court and should not be called upon to discharge disproportionately as individuals the responsibility which rests upon the bar as a whole.

**G. Separate or Plural Appointments.**

1. The United States Magistrate or the Court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.
2. Subject to this prohibition, the same attorney or the same team of attorneys may be appointed to represent plural clients in the same case or in two or more related cases.
3. In such instances, claims for compensation shall be made on separate vouchers. Time spent in common on more than one indictment or case must be prorated among the indictments or cases on which the time was spent, and each indictment or case must be cross-referenced on the vouchers. Time spent exclusively on any one indictment or case may properly be charged on the voucher for that indictment or case.



#### **H. Two Attorneys for One Client.**

1. In a proper case, more than one attorney may be appointed to represent the same client. For example, in an extremely difficult case where the Court finds it in the interest of justice to appoint an additional attorney, and the order states such finding, two attorneys may be appointed for one defendant, and each attorney is eligible to receive the maximum compensation allowable under the Act. The finding of the Court that the appointment of an additional attorney in a difficult case was necessary and in the interest of justice shall appear on the Order of Appointment.

2. Unless appointed by the Court, co-counsel or associate attorneys may not be compensated under the Act. However, an appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the Court, counsel who is not a partner or associate, within the maximum compensation allowed by the Act, separately identifying the provider of each service.

### **VII. DURATION AND SUBSTITUTION OF APPOINTMENT**

#### **A. Duration of Appointment in District Court.**

1. A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States Magistrate Judge or the District Judge through appeal, including ancillary matters appropriate to the proceedings (as set forth in Section III.C.8).

2. In any criminal case in which the defendant has a right to appeal, counsel appointed hereunder shall advise the defendant of said right and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal.

#### **B. Representation on Appeal.**

Counsel appointed under the CJA shall continue the representation until the matter, including appeals, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by a Court Order. If the Court of Appeals determines that assistance of counsel is required to perfect the appeal, the Court of Appeals will issue a CJA voucher for claiming compensation and expenses on appeal. If the judgment of the United States Court of Appeals is adverse to the client, counsel shall inform the client of the right to petition the Supreme Court of the United States for a writ of certiorari. Counsel shall file a petition for a writ of certiorari if the client requests that such a review be sought and, in counsel's considered judgment, there are grounds for seeking Supreme Court review that are not

frivolous and are consistent with the standards for filing a petition contained in the Rules of the Supreme Court and applicable case law.

**C. Change in Financial Status.**

1. If at any time after the appointment of counsel the United States Magistrate Judge or the Court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment, as the interests of justice may dictate.

2. If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the representation and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

3. Upon the finding that funds are available for payment from or on behalf of a person furnished representation, the judicial officer may authorize or direct that such funds be paid:

a. to the appointed attorney;

b. to the bar association or legal aid agency which provided the appointed attorney;

c. to any person or organization authorized under this Plan to render investigative, expert, or other services; or

d. to the Court for deposit in the Treasury as a reimbursement to the appropriation current at the time of payment.

Except as so authorized or directed, appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representing a defendant under the appointment from any person, institution, or organization.

**D. Inability to Pay Retained Counsel.**

If at any stage of the proceedings, including appeal, the United States Magistrate Judge or the District Judge finds that the person is financially unable to pay retained counsel, the Court may appoint counsel and authorize payment as provided in this Plan, as the interests of justice may dictate. An appointment may be made retroactive to include any representation furnished pursuant to this Plan prior to appointment.

#### **E. Substitution of Counsel.**

The United States Magistrate Judge or the District Judge may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

#### **F. Transferred Cases.**

Absent special circumstances, whenever a case is transferred to another district, such as under Rules 20, 21, and 40 Fed. R. Crim. P., representation by counsel appointed in this district shall cease, and new counsel shall be appointed in the transferee district.

### **VIII. COMPENSATION OF COUNSEL AND CLAIMS THEREFOR.**

#### **A. Limitations.**

1. Counsel providing representation under this Plan shall be compensated and reimbursed as provided in 18 U.S.C. 3006A(d), and compensation and reimbursement shall be subject to all of the limitations appearing in that subsection or to such limitations as may be fixed from time to time by the Judicial Conference.
2. Compensation shall not exceed the hourly rates set forth in the Act or subsequently adjusted by the Judicial Conference for time reasonably expended in court or out of court. The hourly rates of compensation as designated are intended to be maximum rates and to be treated as such.

#### **B. Expenses.**

1. Out-of-pocket expenses reasonably incurred by counsel may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for meals for witnesses, the defendant, or family of the defendant cannot be viewed as reimbursable. Expenses for clothing for a defendant are not reimbursable.
2. Fees for transcripts furnished in criminal proceedings or in habeas corpus proceedings pursuant to 18 U.S.C. Sec. 3006A or 28 U.S.C. Sec. 2241, 2254, or 2255, or any other case in which counsel is assigned pursuant to CJA, shall be paid by the United States out of money appropriated for that purpose. Counsel should contact the court reporter for the proceeding for which a transcript is required and assist in processing the CJA Form 24 or SF 1034, as appropriate. Counsel should not incur an out-of-pocket expense for a transcript without prior authorization of the presiding judge which may be obtained by filing a written motion.
3. Compensation may be approved for time spent in necessary and reasonable travel.

4. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, etc.

5. Counsel shall obtain prior approval from the presiding judicial officer for travel other than that covered in paragraph four above because the Administrative Office of the United States Courts has established a procedure by which panel attorneys and experts may obtain government rates for travel in connection with representation pursuant to the CJA. If either an appointed attorney or expert has occasion to travel in connection with CJA representation, authorization for each trip will be written and signed by the presiding judicial official. If confidentiality is a factor, travel requests may be submitted to the Court ex parte, in camera, and placed under seal.

**C. Excess Payment.**

1. Payment in excess of any maximum amount provided in the Act may be made for extended or complex representation whenever the Court in which the representation was rendered, or the United States Magistrate Judge, if the representation was furnished exclusively before the Magistrate Judge, certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the District Judge/Magistrate Judge and by the Chief Judge of the Eighth Circuit or that judge's designee.

2. In any case in which compensation claimed is in excess of the statutory case compensation maximum counsel shall submit with the voucher a letter setting forth in detail the reasons excess compensation is justified.

3. For purposes of determining whether or not an excess payment is warranted under this subsection, the case is considered "complex" if the legal or factual issues are unusual, thus requiring the expenditure of more time, skill, and effort by the lawyer than would normally be required in an average case. The case is considered "extended" if more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings.

4. After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be used in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

#### **D. Interim Payments to Counsel.**

- 1. Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments for both services and expenses.**
- 2. If excess compensation is anticipated, application should be made to the trial judge for a Memorandum Order outlining payment procedures.**
- 3. Written approval of the procedure must be obtained from the chief judge of the circuit or that judge's designee before issuance of the Memorandum Order.**

#### **E. Filing Claims.**

- 1. Record Keeping - Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.**
- 2. A separate claim for compensation and reimbursement shall be made to the district court for representation in the district court and to each appellate court before which the attorney provided representation to the person involved.**
- 3. Each claim shall be submitted on a form CJA 20 and shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States Magistrate Judge and the District Judge, and the compensation and reimbursement applied for or received in the same case from any other source.**
- 4. Each claim shall be further supported by such documentation as the Administrative Office of the United States Courts may require and shall be itemized on such forms as the Administrative Office may prescribe.**

#### **F. Audit by CJA Liaison.**

**Each claim shall be reviewed and audited by the designated member of the presiding judicial officer's staff for mathematical and technical accuracy and for conformity with the Guidelines for the Administration of the Criminal Justice Act, (Vol. VII, Guide to Judiciary Policies and Procedures) and if correct, shall be forwarded to the appropriate District Judge or Magistrate Judge for consideration.**

**G. Approval by District Judge or Magistrate Judge.**

The District Judge shall fix the compensation and reimbursement to be paid to the claimant, except that in cases where representation is furnished exclusively before a United States Magistrate Judge, the claim shall be submitted to the Magistrate Judge to fix the compensation and reimbursement to be paid.

**H. Court Approval Required.**

In cases where representation is furnished other than before the United States Magistrate Judge, the District Judge, or an appellate court, claims shall be submitted to the District Court which shall fix the compensation and reimbursement to be paid.

**I. New Trials.**

For purposes of compensation and other payments authorized under this Plan, an order by the Court granting a new trial shall be deemed to initiate a new case.

**J. Time Limits.**

Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown.

**IX. SERVICES OTHER THAN COUNSEL.**

**A. Upon Request.**

1. Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an *ex parte* application.

2. Upon finding, after appropriate inquiry in an *ex parte* proceeding, that the services are necessary and that the person is financially unable to obtain them, the United States District Judge or the Magistrate Judge, if the services are required in connection with a matter over which the Magistrate Judge has jurisdiction, shall authorize counsel to obtain the services.

3. *Ex parte* applications for services other than counsel shall be heard *in camera* and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the District Judge or Magistrate Judge.

4. With prior authorization, compensation for services under this subsection is limited to \$1,000 in non-capital cases and \$7,500 in capital cases, per organization or individual, exclusive of reimbursement for expenses reasonably incurred, per

individual authorization to perform said service. Payment of any amount exceeding \$1,000 or \$7,500, respectively, shall not be made unless payment in excess of those limits is certified by the presiding judicial official as necessary to provide compensation for services of an unusual character or duration and the amount of the excess payment is approved by the Chief Judge of the Circuit or his/her designee.

**B. Without Prior Approval.**

1. Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph A(2) of this section, the total cost of services obtained without prior authorization may not exceed \$300 and expenses reasonably incurred.

2. The presiding judicial officer may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$300.00.

**C. Maximum Amounts.** Compensation to be paid to a person for services rendered under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed \$1,000 in non-capital cases and \$7,500 in capital cases, exclusive of reimbursement for expenses reasonably incurred. Payment in excess of those limits must be certified by the presiding judicial official as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment must be approved by the Chief Judge of the Eighth Circuit or his/her designee.

**D. Consulting Services in Capital Federal Habeas Corpus Cases.** Where necessary for adequate representation, public and private organizations which provide consulting services to appointed and pro bono lawyers in capital federal habeas corpus cases in such areas as records completion, exhaustion of state remedies, identification of issues, review of draft pleadings and briefs, etc. may be reasonably employed and compensated.

**E. Services for Persons With Retained Counsel.** Investigative, expert, or other services necessary to adequate representation, as authorized by 18 U.S.C. Sec. 3006A(e), shall be available to persons who have retained counsel but who are found by the Court to be financially unable to obtain the necessary services.

**F. Services for Pro Se Litigants.** Persons who are eligible for representation under this Plan, but who have elected to proceed *pro se*, may upon request, be authorized to obtain investigative, expert, and other services in accordance with 18 U.S.C. Sec. 3006A(e).

**G. Claims.** All claims for services other than counsel under this subsection shall include the following: a statement as to the type of, dates of, and time expended for, the services provided; an explanation of the fee arrangement (i.e., hourly rate, per diem rate, etc.); an itemized statement of all expenses for which reimbursement is claimed, with supporting documentation; and supporting documentation, where practicable, for all expenses of lodging and subsistence, and for any expenses in excess of \$50.

## **X. DUTIES OF FEDERAL PERSONNEL AND APPOINTED COUNSEL**

**A. Presentation of Accused for Appointment of Counsel.** Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation. If the person indicates that he or she is not financially able to secure such representation, steps will be taken immediately to assist in the completion of a financial affidavit (CJA Form 23) and to arrange to have the person presented before a Magistrate Judge or District Judge of this court for determination of financial eligibility and appointment of counsel.

**B. Pretrial Services Interview.** Consistent with a resolution of the Judicial Conference during its March 1988 proceedings, the accused will be asked to execute a form approved by the court advising the accused of certain rights including the right to speak with a lawyer before answering any questions in the pretrial interview. Prior to beginning the interview, the pretrial services officer will have the accused execute the PS 1 form. If the accused indicates a desire to have counsel present during the interview, the officer will proceed no further until arrangements have been made to have counsel present.

**C. Notice of Indictment or Criminal Information.** Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise present or deliver a copy of the document to appointed counsel or to the defendant if he is without counsel at the address shown on the defendant's bond papers or to the jail in which defendant is incarcerated.

### **D. Duties of Appointed Counsel.**

It is the duty of all panel members appointed under this Plan to conform to the highest standards of professional conduct. They are to represent their clients diligently and with the utmost professional skill of which they may be possessed, consistent with their obligations as officers of the court and with the Canon of Ethics to which they subscribe. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.



## **XI. MISCELLANEOUS.**

### **A. Forms.**

Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the court, the clerk, counsel, and other claimants.

### **B. Guidelines for the Administration of the Criminal Justice Act.**

The court, clerk of court, and private attorneys appointed under the Act and this Plan, shall comply with the provisions of the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures.

### **C. Effective Date.**

This Plan shall take effect immediately upon its approval by the Judicial Council of the Eighth Circuit.

Adopted by the United States District Court for the Eastern District of Arkansas this 26<sup>th</sup> day of February, 1998.

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Stephen M. Reasoner, Chief Judge